



# California Fair Political Practices Commission

December 29, 1987

Thomas R. Curry  
Livermore City Attorney  
1052 South Livermore Avenue  
Livermore, CA 94550

Re: Your Request for Informal Assistance  
Our File No. I-87-300

Dear Mr. Curry:

This is in response to your letter on behalf of Livermore City Councilmember Tom Vargas concerning his duties under the Political Reform Act (the "Act").<sup>1/</sup> Because of the general nature of your question, we treat your request as one for informal assistance.<sup>2/</sup>

## QUESTION

As an employee of Transamerica Title, when must Mr. Vargas disqualify himself from participating in decisions which come before the city council?

## CONCLUSION

Mr. Vargas may not participate in any decision which will have a reasonably foreseeable material financial effect on Transamerica Title.

## FACTS

Mr Vargas is employed by Transamerica Title Insurance Company as a major account manager. His specific duties include developing high level customers, developing company marketing programs, and developing and maintaining good business and community relations.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

As an employee, Mr. Vargas receives a salary and an expense reimbursement in excess of \$10,000 per year. He receives no commission. Additionally, Mr. Vargas holds a common stock investment in Transamerica Corporation. This investment is an ownership interest of less than 10%. It has a value of between \$10,000 and \$100,000.

As a member of the Livermore City Council, Mr. Vargas frequently participates in decisions involving land use, e.g., general plan amendments, zoning decisions, subdivision map act decisions, etc. Occasionally applicants or owners of property which are the subject of a particular land use decision before the Livermore City Council have engaged or will contemplate engaging Transamerica Title Company for title/escrow services.

Mr. Vargas desires that he take no action as an employee which will later require that he disqualify himself from participating in a decision as a member of the Livermore City Council.

#### ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

\* \* \*

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

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(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a),(c), and (d).

Transamerica is Mr. Vargas' employer and is a source of income to Mr. Vargas. (Section 87103(c) and (d).) Mr. Vargas also has an investment interest in Transamerica. (Section 87103 (a).) Accordingly, Mr. Vargas may not participate in any decision which will have a reasonably foreseeable material financial effect on Transamerica.

The Commission has adopted regulations for determining whether the reasonably foreseeable effects of a decision are considered "material". (Regulations 18702, 18702.1 and 18702.2, copies enclosed.) Among these, Regulation 18702 (b)(3)(B) provides that in the case of a source of income, an official may not participate in a governmental decision when there is a "nexus" between the decision and the purpose for which the official receives income. In other words, the official may not accomplish in his public capacity what he is paid to accomplish in his private capacity. (Best Advice Letter, No. A-81-032, copy enclosed.) You have specifically asked about situations in which Mr. Vargas has been "contacted in his capacity as a Transamerica employee by a potential purchaser of property which will likely be the subject of a land use decision before the city council". While you have not provided us with specific facts, it is clear that if any portion of the services to be provided to the potential purchaser includes assistance in obtaining a favorable land use decision from the city council, Mr. Vargas is disqualified from participating in that decision. (See Haas Advice Letter, No. A-84-037, copy enclosed.)

Mr. Vargas is also prohibited from participating in a decision where Transamerica "appears" before him. (Regulation 18702.1 (a)(1) and (2).) Finally, Mr. Vargas must disqualify himself from any decision which will have a reasonably foreseeable effect upon Transamerica which reaches the dollar values described in Regulation 18702.2

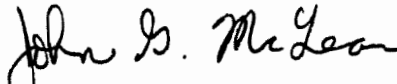
The effect of a decision is "reasonably foreseeable" if there is a substantial likelihood that it will occur. Certainty is not required; however, if an effect is a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

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I trust that this letter responds to your request. If in the future you wish to discuss a specific factual situation, please do not hesitate to contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

A handwritten signature in dark ink, appearing to read "John G. McLean". The signature is written in a cursive style with a large initial "J".

John G. McLean  
Counsel, Legal Division

Enclosures  
JGM:jaj:da

OFFICE OF THE  
CITY ATTORNEY  
LIVERMORE, CALIFORNIA

THOMAS R. CURRY  
City Attorney

JONATHAN P. LOWELL  
Assistant City Attorney

November 23, 1987

Nov 30 10 45 AM 1987  
Livermore Ave.  
Livermore, California 94550  
(415) 449-4018

Ms. Diane Griffiths  
General Counsel  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95804-0814

Re: Request for Advice Letter

Dear Ms. Griffiths:

I have been authorized by Tom Vargas, a Councilmember of the City of Livermore, to request an Advice Letter from you on the following situation:

Mr. Vargas is employed by Transamerica Title Insurance Company as a Major Account Manager. His specific duties include developing high level customers, developing company marketing programs, and developing and maintaining good business and community relations.

As an employee, Mr. Vargas receives a salary and an expense reimbursement in excess of \$10,000 per year. He receives no commission. Additionally, Mr. Vargas holds a common stock investment in Transamerica Corporation. This investment is an ownership interest of less than 10% and has a value of between \$10,000 and \$100,000.

As a member of the Livermore City Council, Mr. Vargas frequently participates in decisions involving land use, e.g., General Plan Amendments, zonings, Subdivision Map Act decisions, etc. Occasionally applicants or owners of property which are the subject of particular land use decision before the Livermore City Council have engaged or will contemplate engaging Transamerica Title Company for title/escrow services.

Early in Mr. Vargas' tenure as a Councilmember my office, at his request, issued an opinion generally discussing potential conflicts of interest with particular attention to the question of materiality as enunciated by the Commission in Cal.Admin.Code Section 18702.2. The standards set forth in this regulation have

Ms. Diane Griffiths  
November 9, 1987  
Page Two

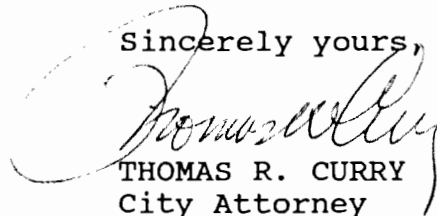
provided Mr. Vargas with sufficient guidance in areas in which he is not directly involved as an employee of Transamerica Title.

This regulation, however, may not provide adequate guidance in situations in which Mr. Vargas could directly become involved as an employee of Transamerica Title. For example, Mr. Vargas could be contacted in his capacity as a Transamerica Title employee by a potential purchaser of property which will likely be the subject of a land use decision before the Livermore City Council. Mr. Vargas desires that he take no action as an employee which will later require that he disqualify himself from participating in a decision as a member of the Livermore City Council. He, of course, cannot prevent people from contacting him.

Mr. Vargas and I have discussed this situation on numerous occasions. My advice to him has been that should an individual contact him in his employment capacity involving property which will be before the City Council for a land use decision, Mr. Vargas should personally decline to deal with the transaction as an employee of Transamerica. I have further advised Mr. Vargas that as long as he avoids such personal involvement, (and assuming that he adheres to the provision of Regulation 18702.2) he would not be required to disqualify himself from decisions which involve property for which Transamerica provides title/escrow services.

As I indicated, Mr. Vargas' goal is to avoid situations in which he must disqualify himself from participation as a member of the Livermore City Council. Your practical advice on how he can best conduct himself as an employee of Transamerica Title to achieve this goal would be greatly appreciated.

Sincerely yours,



THOMAS R. CURRY  
City Attorney

TRC:gd  
cc: Tom Vargas

87-300

OFFICE OF THE  
CITY ATTORNEY  
LIVERMORE, CALIFORNIA

THOMAS R. CURRY  
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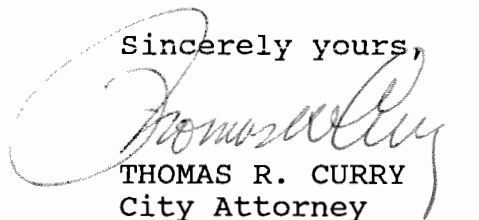
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Sincerely yours,



THOMAS R. CURRY  
City Attorney

TRC:gd  
cc: Tom Vargas





# California Fair Political Practices Commission

December 1, 1987

Thomas R. Curry  
City Attorney  
1052 S. Livermore Avenue  
Livermore, CA 94550

Re: 87-300

Dear Mr. Curry:

Your letter requesting advice under the Political Reform Act was received on November 30, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Diane M. Griffiths*  
Diane M. Griffiths  
General Counsel

DMG:plh  
cc: Councilmember Tom Vargas